

To: Clerk of the Michigan Supreme Court
From: Josh Ard
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Re: Proposed changes to MRPC 3.4(f)
Date: February 28, 2010

I strongly support the proposed change of eliminating the phrase “is a relative or” in this rule. It should be an ethical violation for a lawyer to cajole a relative of a client from voluntarily giving relevant information to another party.

The current rule states that a lawyer shall not:

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party, unless:

- (1) the person is *a relative or* an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information. MRPC 3.4

I have no comment about the proposed addition of a reference to a Michigan Rule of Evidence in the text of the rule.

I am particularly concerned with elder abuse and exploitation. For example, I was Special Advisor to the Governor’s Task Force on Elder Abuse and am a former chair of the Elder Law and Disability Rights Section of the State Bar. Statistics from the national Center on Elder Abuse indicate that “[f]amily members are more often the abusers than any other group.” A lawyer for an accused family member should not be able to persuade the victim herself or another family member from speaking about these matters. Sufficient persuasion might suffice to stop the inquiry before the truth is discovered. There is simply no reason I can think of to condone such conduct. Elder abuse and domestic abuse can have horrible consequences for victims. Maintenance of the current rule can harm palpable harm to many of our most vulnerable citizens.

I looked at the comments on the American Bar Association’s analysis of this rule, which contains the family exception, and nothing at all was said about family members. The only discussion was directed to employees. Family status differs in many important ways from employment status. One may choose one’s employers, but has no choice about family, except for marriage. If one is dissatisfied with a job, then quitting is an option. Again, except for divorce, this really is not possible for family relationships.

Families are important but should not be a means of covering up intra-family venality. Please remove the family exception to this rule.